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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of)
)
Amendment of the Commission's) IB Docket No. 95-41
Regulatory Policies Governing Domestic)
Fixed Satellites and Separate International)
Satellite Systems)

To: The Commission

OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION AND IMMEDIATE INTERIM RELIEF

TRW Inc. ("TRW"), by counsel and pursuant to Section 1.429(f) of the Commission's Rules, hereby opposes the "Petition for Partial Reconsideration and Immediate Interim Relief " filed by Comsat Corporation ("Comsat") on April 11, 1996 in the above-captioned docket.^{1/} Comsat's request for "reconsideration" is moot in light of the Commission's initiation of a separate proceeding to examine issues concerning provision of U.S. domestic service using non-FCC-licensed satellites. Similarly, Comsat's companion request that the Commission immediately grant it authority to serve the U.S. domestic market using INTELSAT and Inmarsat capacity should be rejected by the Commission on the grounds that it is both procedurally inappropriate and unsupported by the various justifications Comsat offers.

^{1/} See Amendment of the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, 11 FCC Rcd 2429 (1996) ("DISCO I Order").

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I. Comsat's Petition Is Procedurally Inappropriate.

Comsat's Petition is procedurally flawed in that it asks the Commission to "reconsider" an issue that was not actually acted on in the underlying Order — the use of non-U.S.-licensed satellites for the provision of U.S. domestic service. Instead of making a final determination on that question, the Commission deferred it to a separate rulemaking proceeding. Thus, the only decision from the DISCO I Order which the Commission can reconsider is the decision to defer action.

Reversal of the Commission's initial determination would therefore leave the Commission with the need to fully consider in the first instance both the reasonableness of and the appropriate approach to permitting U.S. domestic service via non-FCC-licensed satellite capacity. Because the Commission has already initiated a new proceeding to address this issue,^{2/} the Petition is moot with respect to the only relief that the Commission could grant — revisiting and deciding the issue that was previously deferred. This process will now take place in the DISCO II proceeding that is already underway. Accordingly, the Comsat Petition should be denied.

^{2/} See Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, FCC 96-210, slip op. (released May 14, 1996) ("DISCO II NPRM").

II. There Is No Basis For Comsat's Assertion That Its Present Inability To Offer U.S. Domestic Service Using INTELSAT and Inmarsat Capacity Is Unfair Or Discriminatory.

Apart from the procedural inappropriateness of Comsat's Petition, Comsat's complaint that it is unfairly disadvantaged by the current state of Commission policy is lacking in substance. In particular, there is no merit to its assertion that it is the object of "disparate treatment of similarly situated satellite systems."^{3/} There are, in fact, no other U.S. companies with which Comsat is similarly situated, especially in relation to the use of INTELSAT and Inmarsat capacity.

Although Comsat is a U.S. company, it is not a U.S.-licensed satellite system — the particular type of entity covered by the Commission's DISCO I Order. Indeed, contrary to Comsat's own implication, it is not a satellite system operator at all,^{4/} but a reseller of capacity that is offered by INTELSAT and Inmarsat, both of which are controlled by non-U.S. interests. As a reseller, Comsat may provide customers both domestic and international service by utilizing capacity on satellites authorized for these uses (and accordingly, is not precluded from offering "one-stop shopping" to its users).^{5/} The DISCO I Order simply defers the question whether INTELSAT and Inmarsat

^{3/} Comsat Petition at 8 n.15.

^{4/} See Comsat Petition at 2 (incorrectly stating that "of all the U.S. companies that are capable of providing service via their own satellite facilities, COMSAT is the only one omitted from the DISCO I Order.") (emphasis added)

^{5/} See Comsat Petition at 5.

capacity may be used by anyone to provide U.S. domestic service and, if so, on what terms. In the interim, no entity is permitted to utilize this unique capacity for service within the United States.^{6/}

Comsat's structure and mode of operation is simply not analogous to that of any FCC-licensed company that operates its own satellite facilities. For example, only Comsat is permitted under present law to offer capacity on INTELSAT and Inmarsat satellites for any purpose. As a result, Comsat's argument of unique disadvantage rings particularly hollow. Through its petition, Comsat is actually seeking to extend its uniquely advantaged status as a conduit for INTELSAT and Inmarsat capacity from international service to domestic service. The fact that it is not immediately able to do so does not mean it is suffering discriminatory treatment, as no other provider has direct access to this capacity for any purpose.^{7/}

Indeed, use of Inmarsat capacity to provide domestic mobile satellite service would be particularly troublesome given the Commission's previous conclusion

^{6/} Notably, Comsat already has an application pending through which it has sought authority to use Inmarsat facilities to provide U.S. domestic service. See FCC File No. ITC-95-341. TRW and others have opposed grant of this application. See, e.g., TRW Petition to Deny, filed June 26, 1995. Numerous objections have been raised in that proceeding, both within and outside the scope of Comsat's current petition, and the Commission should not render a decision ignoring those concerns in the context of Comsat's ex parte Petition.

^{7/} It should also be noted that Comsat has been very willing over a period of many years to accept the immense benefits of its privileged statutory position as a monopoly provider of INTELSAT and Inmarsat service, and it is therefore in no position to complain that it is now uniquely handicapped because of the Commission's need to consider thoroughly the myriad issues presented by the possible use of these systems to provide U.S. domestic service.

that “Comsat should not be permitted to utilize its status as the U.S. representative in INTELSAT and Inmarsat to gain competitive advantages in technology development or other markets,” which will tend to discourage vigorous competition in these markets.^{8/}

The developmental stage of the U.S. domestic mobile satellite market places added importance on prohibiting Comsat from leveraging its global monopoly on maritime mobile service to distort competition in the U.S. mobile service market.^{9/} In granting Comsat limited authority to provide interim domestic services to help further the development of the mobile satellite industry in the U.S., the Commission clearly stated:

Inmarsat should not generally be viewed as an available option for other interim domestic services within the U.S. while the permanent structure for those services is being developed.^{10/}

Comsat’s current Petition implicates each of these considerations. The Commission has thus articulated a solid public policy basis for denying the expansion of interim domestic service through Inmarsat, and Comsat’s Petition should be denied for this reason alone.

^{8/} Petition of Motorola Satellite Communications, Inc. for Declaratory Ruling Concerning Participation by Comsat Corporation in a New Inmarsat Satellite System Designed to Provide Service to Handheld Communications Devices, 9 FCC Rcd 7693, 7711 (1994), (quoting Comsat Study — Implementation of Section 505 of the International Maritime Satellite Telecommunications Act, 77 F.C.C. 2d 564, 609 (1980) (emphasis removed)).

^{9/} Because Comsat would not need to build new satellite facilities, it would have the ability to undercut prices offered by new entrants.

^{10/} American Mobile Satellite Corp., 7 FCC Rcd 942, 944 (1992); Aeronautical Radio, Inc., 7 FCC Rcd 1006, 1008 (1992).

III. The Commission's Decision To Defer To A Future Rulemaking The Difficult Issues Relating To Use Of INTELSAT and Inmarsat Capacity To Provide U.S. Domestic Service Is Entirely Consistent With U.S. Law and Policy.

Because neither INTELSAT nor Inmarsat is U.S.-owned or U.S.-licensed, it was entirely appropriate for the Commission to conclude that the issue of permitting capacity on these systems to be used for provision of U.S. domestic service should be considered in the context of a general rulemaking concerning access to the U.S. market for systems that are not licensed by the FCC.^{11/} Indeed, because of the special circumstances relating to INTELSAT and Inmarsat capacity, these issues are, if anything, more complex than the market entry issues that exist with respect to satellites authorized by foreign administrations.^{12/}

Comsat's claim that the Commission's decision to defer consideration of the issue of using INTELSAT and Inmarsat capacity for domestic U.S. service is somehow "inconsistent" with U.S. law and policy governing INTELSAT and Inmarsat is baseless.^{13/} Statutory language referring to the commitment of the United States to establish and support these international systems is inapposite to the issue of allowing this capacity to be used for the very different purpose of providing U.S. domestic

^{11/} The record assembled in the course of the DISCO I proceeding was overwhelmingly negative on the question of extending the Comsat/INTELSAT monopoly to U.S. domestic service. See DISCO II NPRM, FCC 96-210, slip op. at 22 (¶ 63).

^{12/} See DISCO II NPRM, FCC 96-210, slip op. at 22-25 (¶¶ 62-74).

^{13/} See Comsat Petition at 8-12.

communications. Whether such a significant change should be permitted, and on what terms, is appropriately one of the subjects of the Commission's DISCO II NPRM; it is not a policy question that is governed by existing statute, precedent, or policy. As Comsat itself states, U.S. support for INTELSAT is premised on the importance of its "global public service obligations."^{14/} A history of such support does not mandate that the U.S. honor INTELSAT's (or Comsat's) domestic commercial aspirations.

IV. Conclusion

For the foregoing reasons, TRW respectfully requests that the Commission reject Comsat's Petition for Reconsideration as moot in light of the Commission's recent adoption of the DISCO II NPRM. Because important policy issues concerning the possible use of INTELSAT and Inmarsat capacity for provision of domestic U.S. service have yet to be addressed in that proceeding or elsewhere, it would be inappropriate for the Commission to prejudge them by granting the sort of interim relief that Comsat has requested. Moreover, Comsat has made no showing that

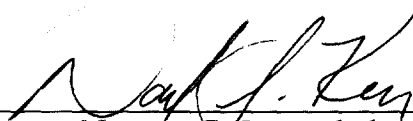
^{14/} Comsat Petition at 9, citing Communications Satellite Corporation v. FCC, 836 F.2d 623, 625 (D.C. Cir. 1988).

such relief is in any way justified. Accordingly, its petition should be rejected in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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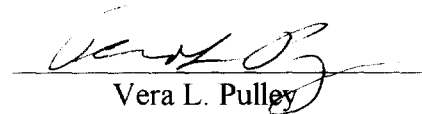
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